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UNCLAS SECTION 01 OF 08 SINGAPORE 000996

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SENSITIVE

STATE PASS USTR FOR AUSTR BWEISEL, JJENSEN, JMCHALE, VESPINEL,
AND AMATTICE
COMMERCE FOR JBAKER
FWS FOR TVANNORMAN
USDA/FAS FOR OSTA, OCRA, ONA

E.O. 12958: N/A

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SUBJECT: FTA AT YEAR THREE - ZEROING IN ON COMMITMENTS

REF: A) 06 Singapore 1119 B) Singapore 371

1. (SBU) Summary/Action Items: Assistant U.S. Trade Representative Barbara Weisel singled out Singapore's continued failure to fulfill its telecom commitments as the USG's top priority during the third annual review of the U.S.-Singapore Free Trade Agreement (FTA) held in Singapore May 11. While applauding FTA implementation generally so far and the substantial increases in trade since the FTA came into effect in January 2004, she expressed concern that the enormous benefits of the FTA for both economies might be overshadowed by increasing public scrutiny in the United States of certain outstanding implementation issues. The review agenda focused both on implementation of the existing FTA and possible future programs, including telecommunications, intellectual property rights (IPR), environmental cooperation, imports of U.S. beef and chicken products, gas sector liberalization, market access for goods (tariff acceleration, textiles, harmonized system revisions, etc.), a regional FTA exploratory working group, pharmaceuticals, financial and legal services, and competition. AUSTR Weisel and Ministry of Trade and Industry (MTI) Deputy Secretary LOH Wai Keong led the respective delegations. The USG

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and GOS agreed to following action items:

-- Telecom: The GOS will provide a list of those companies that have already begun building out to SingTel's multiple local exchanges, and include specifics related to their interconnection status.

-- Intellectual Property: The USG and GOS will convene a digital video conference (DVC) to continue their discussions related to Singapore's possible accession to the Anti-Counterfeiting Trade Agreement (ACTA) and enforcement of simulcasting provisions under the Copyright Act.

The USG will provide a letter to clarify where it believes discrepancies exist between U.S. and Singapore law governing exemptions for sound rebroadcasts on the Internet.

The GOS will meet with the Business Software Alliance (BSA) to assess whether the lack of whistleblower protections has affected its members' ability to protect their IP.

-- Environment: The USG and GOS have scheduled two DVCs to help prepare the second Plan of Action (POA) prior to the biennial review of bilateral cooperation on the environment tentatively scheduled for fall 2007 in Singapore.

Illegal Logging: Both sides agreed to exchange point-of-contact information for illegal logging issues.

-- Agriculture: The GOS agreed to encourage its officials to meet with USDA technical experts at the earliest possible opportunity to continue the dialogue concerning market access for bone-in cuts of U.S. beef and sanitary standards for poultry meat.

-- Tariff Acceleration: The USG will provide an unclassified version of the International Trade Commission's (ITC) report concerning Singapore's requests, if available.

-- Textile Tariff Preference Level (TPL): The GOS will submit additional information related to its TPL request (Note: The USG emphasized that it could not commit to additional consideration of this matter. End note.)

-- Textile Short-Supply Request: The USG will confirm in writing that it approved two (not one) short-supply requests in July 2006 via an exchange of letters between USTR Schwab and Minister for Trade and Industry LIM Hng Kiang.

-- Harmonized System of Tariffs (HS2007): The GOS will provide a report to the USG highlighting potential issues related to possible transposition errors and recommended solutions to resolve them.

The USG will provide a copy of its revised tariff schedule.

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The USG will inform the GOS when it is prepared to begin implementation of the revised HS2007, based on coordination with other ASEAN countries.

-- Exploratory Working Group on Regional FTAs: The USG and GOS agreed to establish an exploratory working group to discuss the future of regional FTAs.

-- Pharmaceuticals: The GOS will provide additional information about Singapore's Standard Drug List (SDL) approval process.

-- Financial Services: The GOS will provide an update concerning plans to expand credit bureau access and membership.

The GOS will provide a response to claims made by U.S. industry that credit cards issued by local branches of foreign banks cannot be used to obtain cash from ATM machines.

-- Legal Services: The GOS will provide an update on strategies for liberalizing the legal services sector after it has completed its review of several proposals in the next few months.

End Summary/Action Items.

FTA Benefits and Levels of Commitment

12. (U) AUSTR Weisel and DepSec Loh agreed that overall implementation of the FTA in its third year continued to proceed smoothly, with a minimum of difficult issues and substantial benefits for both economies. AUSTR Weisel cautioned, however, that recent U.S. media attention on Singapore in areas such as environmental protection and cooperation -- as well as the potential for heightened scrutiny of its record on IPR enforcement, enhancing competition, and the screening of transshipped cargo -- could potentially overshadow the enormous gains achieved thus far. She noted that these news reports

questioned Singapore's commitment to fulfilling certain FTA obligations and that the U.S.-Singapore trade relationship could suffer damage should these issues receive wider coverage. Singapore and the United States needed to be mindful of how they resolved outstanding trade issues, especially as the debate in Washington over the renewal of the President's Trade Promotion Authority intensified. DepSec Loh said that Singapore was equally concerned about these press reports. He stressed that the GOS wanted to work with the USG and ASEAN to combat illegal logging. He cited Singapore's discussion of the regional haze issue at the United Nations in 2006 as an example of how it was taking a leading role in resolving transnational environmental issues.

Telecom

-- Reasonable access to "last mile" leased lines (USG)

¶3. (SBU) AUSTR Weisel noted that our number-one FTA implementation issue with Singapore was its continued failure to fulfill obligations to offer U.S. and other facility-based operators (FBOs) reasonable access to dominant carrier SingTel's leased lines. She asked the GOS to reconsider its 2006 decision that allowed SingTel to deny competitors reasonable access to leased capacity at tandem exchanges (see below). This request was all the more urgent in light of SingTel's June 2006 announcement that it would close 12 of its 27 local exchanges at some unspecified time in the future, which had effectively put FBOs' investment plans on hold. The Infocomm Development Authority (IDA) responded that it was still assessing whether to revise the required prior notification period SingTel must provide before closing a local exchange from six to eighteen months.

¶4. (SBU) AUSTR Weisel emphasized that best solution was for the GOS to permit high-speed tandem access (i.e., access to the dominant carriers' leased lines at economically efficient points

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of aggregation). In doing so, the GOS could resolve the litany of obstacles SingTel had introduced to stymie competitors' business plans -- some of which dated as far back as December 2003 when IDA first designated "last mile" access as a wholesale, regulated service. IDA countered that the current regulatory environment provided adequate provisions for reasonable access. Although it could not confirm whether any FBOs had taken advantage of its stated policy objective to encourage build-out to SingTel's multiple local exchanges, IDA offered to provide a list to the USG of those companies that it thought had already begun doing so, to include specifics related to their interconnection status.

¶5. (SBU) AUSTR Weisel questioned Singapore's commitment to liberalizing its telecom sector. In the absence of a vigorous regulatory response to SingTel's defensive actions, she worried that Singapore's track record in the telecom sector would constitute another issue "lurking beneath the surface" that might come to light under scrutiny by U.S. media or lawmakers. IDA argued that it was fully committed to increasing competition in the telecom market and "still very committed" to the FTA and "very watchful" of any impediments, which it would endeavor to remove in accordance with Singapore's regulatory process. AUSTR Weisel said that the USG did not question the integrity of the regulatory process or IDA's commitment to it, but that SingTel appeared to be doing its utmost to thwart GOS implementation of this key FTA commitment. DepSec Loh noted that both sides would need to continue their dialogue on this issue.

Intellectual Property

-- Anti-Counterfeiting Trade Agreement (ACTA) (USG)
-- Simulcasting: Exemptions for Sound Rebroadcasts on the Internet (USG)
-- Penalties for Copyright Act (136.3A) violations (USG)

-- Whistleblower protections (USG)
-- Exemptions for circumvention of technological access controls
(e.g. lost key codes for computer activation) (USG)

¶16. (SBU) AUSTR Weisel expressed the USG's desire to conclude an ACTA with Singapore. An ACTA would enhance existing IPR protections under the FTA and establish new standards that better addressed digital applications. The Ministry of Law representative responded that the GOS had held several consultations with the USG and was still assessing what its obligations would be under the ACTA. It recognized that the ACTA had been intentionally drafted in broad terms, but still required more specifics before it could commit. MinLaw did not foresee difficulty agreeing to the ACTA if the GOS' obligations would be similar to those in the FTA, but said that provisions beyond that could prove problematic. Both sides agreed that USTR and the Intellectual Property Office of Singapore (IPOS) should convene a digital video conference (DVC) to continue discussions of the issue.

¶17. (SBU) AUSTR Weisel raised U.S. companies' difficulties with obtaining royalties from Singapore's government-linked MediaCorp for sound rebroadcasts on the Internet. MinLaw said it had concluded that U.S. and Singapore law concerning exemptions for simulcasts were "fairly compatible." It asked the USG to provide a letter of clarification to determine where discrepancies, if any, existed. The GOS could not direct MediaCorp to pay royalties if they were due; rather, U.S. companies would have to seek a court settlement. Both sides agreed to discuss the simulcasting issue in the abovementioned DVC.

¶18. (SBU) AUSTR Weisel highlighted a case in 2006 in which the penalty levied on a company for illegal software use was significantly lower than the amount it would have paid for legitimate product and reiterated her request made at the 2006 FTA review that the GOS consider increasing deterrent penalties under Section 136(3A) of the Copyright Act. MinLaw argued that the judge had concluded there were mitigating factors in this particular case that warranted the low fine. AUSTR Weisel countered that the issue was less about the money and more about

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how Singapore benchmarked itself against international best practices. Although Singapore had one of the strongest IPR regime in Asia, it still had considerably higher piracy rates than Japan, Australia or the United States. Stiffer penalties, particularly if pegged to the number of infringing copies, would offer an excellent opportunity to demonstrate the GOS' commitment to strong IP protection, she concluded.

¶19. (SBU) In response to USG concerns about inadequate whistleblower protections for copyright violations (also raised at the 2006 FTA review), the GOS said that it would meet (again) with the Business Software Alliance (BSA) to assess how this issue affected its members' ability to protect their IP. MinLaw expressed concern about whether whistleblower protections would conform to Singapore's legal tradition, which allowed the accused to face his accuser in court.

¶110. (SBU) In response to AUSTR Weisel's questioning of a proposed exemption under Singapore's Copyright (Excluded Works) Order 2007 for lost key codes used for activating computer programs, MinLaw said that it had based this provision on U.S. copyright law. It offered to discuss USG concerns further, perhaps in the IPR DVC.

Environmental Cooperation

-- Combating illegal logging (USG)
-- Biennial review of environmental cooperation (USG/GOS)
-- Arowana Dragonfish (GOS)

¶111. (SBU) AUSTR Weisel reiterated the importance of enhanced bilateral environmental cooperation, especially given the

heightened U.S. media attention to Singapore's record. She called for continued dialogue on combating illegal logging, including Ramin timber. She noted that, following on the U.S.-Indonesia Memorandum of Understanding (MOU) to combat illegal logging signed in November 2006, she noted that the USG had had received positive responses from Indonesia, Malaysia, and Brunei in discussions about ways to improve cooperative efforts. DepSec Loh welcomed the regional dialogue and said that Singapore was prepared to participate, including as co-host with the U.S. Forest Service of a regional workshop on Ramin scheduled for later this year. He noted that the GOS shared the USG's commitment to environmental cooperation. Both sides agreed to exchange point-of-contact information on the illegal logging issue.

¶12. (SBU) AUSTR WEISEL highlighted the need to conclude a second Plan of Action (POA) before the biennial review of bilateral cooperation on the environment, tentatively scheduled for September or October 2007 in Singapore. A Ministry of the Environment and Water Resources (MEWR) representative said that MEWR and its USG counterparts intended to schedule two DVCs in the run-up to the biennial review. He cited examples of steps the GOS had taken under the current POA, including a recent MOU signed with the American Water Works Association to facilitate technical exchanges. Singapore also chaired the ASEAN Sustainable Cities Working Group, which was scheduled to review progress under its Memorandum of Intent (MOI) later this year. In response to queries about Singapore's commitment to working with the USG to combat vessel pollution, DepSec Loh asserted that the GOS had taken action against domestic violators and was also engaged in regional efforts to address this problem.

¶13. (SBU) GOS officials expressed frustration with the USG's "inflexibility" in accommodating its request to allow imports of Arowana Dragonfish into the United States, first raised at last year's review. They argued that Singapore's proposal offered a good balance between trade and conservation, in particular given that Singapore lacked any wild population of Arowana. OES/ENV officer explained that U.S. regulations governing trade in endangered species -- including that such trade must enhance the species in the wild -- made it extremely difficult to move forward on this issue. The GOS said that it had not undertaken any efforts to protect wild populations regionally, but noted that Malaysia was also interested in exporting Arowana. The USG

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delegation said it would welcome further discussions with the GOS about potential regional plans, but made no commitments. It noted that Washington would be extremely reluctant to revise its policies pertaining to trade in endangered species.

Agriculture

- Imports of bone-in cuts of U.S. beef and offal (USG)
- Microbial standards for poultry (USG)

¶14. (SBU) AUSTR Weisel emphasized the importance to the President and Congress of beef market access based on OIE (World Organization for Animal Health) guidelines. The Agriculture Counselor thanked the GOS for its measured approach to facilitating imports of boneless cuts of U.S. beef, which resumed in January 2006. He asked that the Agri-Food Veterinary Authority (AVA) move expeditiously to lift the ban on bone-in beef and variety meats following the OIE's anticipated classification of the United States as a "controlled-risk" country for BSE (Bovine Spongiform Encephalopathy or mad cow disease), and based on the extremely low prevalence of BSE in the United States. (Note: the OIE unanimously approved the controlled risk classification for the United States during its May 20-23 General Assembly. End Note.) AUSTR Weisel noted that lifting the remaining import restrictions on U.S. beef was a top priority for the President. He had engaged leaders of several countries in the region on this issue, and they had indicated they would move quickly to resume imports of U.S. beef following the OIE decision. GOS officials noted that OIE guidelines were

not binding. They were open to allowing imports of bone-in beef, but cautioned that this decision would require buy-in from all constituents, including consumers. They doubted any further market opening would occur before the President's expected visit in September to attend the U.S.-ASEAN Summit. DepSec Loh said he would convey to AVA (which was not present) the need to meet with USDA technical experts at the earliest possible opportunity to continue our dialogue.

¶15. (SBU) The Agriculture Counselor noted that Singapore's zero tolerance for Salmonella Enteritidis (SE) and low tolerances for Staph Aureus on raw poultry were not scientifically justified and had resulted in the rejection of U.S. poultry shipments. He asked the GOS to reconsider its overly restrictive policies and expressed his hope that AVA's current assessment of international standards and best practices would lead it to a more flexible and science-based approach. DepSec Loh said he would communicate these concerns to AVA and deferred to our respective technical experts to determine next steps.

Energy Sector Liberalization

-- InterGen: Access to Electrical Power Generation Market (USG)

¶16. (SBU) AUSTR Weisel urged the GOS to move quickly to liberalize its gas sector and to resolve longstanding issues that had prevented U.S. energy company InterGen from entering the market as Singapore's first independent electricity producer. (Note: Two government-linked companies -- Gas Supply and PowerGas -- have been engaged in arbitration since 2004 that prevents third-party access to a section of pipeline that carries natural gas to Singapore from Indonesia. End note.) DepSec Loh said that the GOS was working to resolve this problem. He expected Parliament to pass an amended Gas Act that would pave the way for new market entrants after a second reading May 21, and for the legislation to come into force in June. (Note: As anticipated, Parliament approved the Gas Act May 21. End note.) The GOS recognized the need to enhance market access in the gas sector to ensure alternative supplies, and MTI Minister Lim had met with InterGen's CEO on several occasions to assure him of the GOS' support.

¶17. (SBU) AUSTR Weisel highlighted the tight deadline for InterGen, given that the Indonesian government had indicated it would terminate its supply contract with the company in June if it had not yet finalized the transport of its contracted gas.

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She expressed her concern that one or both of the abovementioned government-linked companies might seek legal action after the Gas Act took effect to prevent InterGen from accessing the disputed pipeline. She asked if the GOS be was prepared to deny a request to stay the decision if this were the case. DepSec Loh responded that the GOS was committed "in spirit" to an open-access regime for gas and that it would work to address any problems in the market.

Market Access

- Tariff acceleration process: polycarbonates and peanuts (GOS)
- Textiles (GOS)
 - request for improved TPL
 - status of "short supply" request
- HS2007 changes (GOS)
- Diagonal Cumulation (GOS)
- Regional FTA exploratory group (USG/GOS)
- Customs Administration: reduced record-keeping periods (GOS)

¶18. (SBU) Following up on Singapore's requests made at the March 2006 second annual review, AUSTR Weisel said that the USG was unable to agree to accelerated elimination of tariffs on certain polycarbonates (HS3907.40.00) and increases in Tariff Rate Quotas (TRQs) for peanuts (HS2008.11). She explained that in public comments solicited via a Federal Register Notice

issued in August 2006, U.S. industry expressed strong opposition to granting these requests, in part due to declining revenues for these products domestically. According to the International Trade Commission (ITC), which issued its findings in early 2007, duties incurred by Singapore shippers of polycarbonates to the United States were lower than for other countries. Additionally, the trade balance had shifted in favor of Singapore since the FTA came into effect, making it the largest exporter of polycarbonates to the United States. For peanuts, ITC questioned why Singapore had made this request since it had significant excess capacity under both its TRQ and global quotas. AUSTR Weisel indicated that she would provide an unclassified version of the ITC report if one were available.

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¶19. (SBU) Concerning Singapore's proposed increase of its textile tariff preference level (TPL) -- also raised at the 2006 FTA review -- AUSTR Weisel said that the USG could not agree to this request. She noted that Congress had indicated it would not approve any more FTAs with TPLs, given the domestic sensitivities in the textile and apparel industries. The GOS stressed that the TPL increase was a key issue. AUSTR Weisel said it would be useful if the GOS could submit additional information concerning this request and related issues in writing, but did not commit to additional USG consideration of this matter. With regard to a textile short-supply request that the GOS believed was still outstanding, AUSTR Weisel agreed to provide a letter to confirm that the USG had in fact approved both this and another short-supply request in July 2006 via an exchange of letters between USTR Schwab and MTI Minister Lim.

¶20. (SBU) The Joint Committee noted that both governments had completed transposing the FTA's Goods-Specific Rules to incorporate changes to the harmonized system of tariffs ("HS2007"). MTI representatives said that Singapore Customs would begin implementation in October 2007. AUSTR Weisel explained that the USG had delayed its implementation to coordinate with other ASEAN countries and would inform the GOS when it was prepared to begin this process. MTI said that ASEAN had completed its first round of nomenclature revisions and that this would not effect the October 2007 deadline. In response to GOS concerns about possible transposition errors, AUSTR Weisel noted that the USG had not encountered any problems previously. The GOS offered to provide a list of its concerns and recommended solutions to resolve them. The USG agreed to provide its revised tariff schedule.

¶21. (SBU) The GOS inquired about the status of its proposal made last year that Singapore, Australia, and the United States build on their respective bilateral FTAs to introduce "diagonal

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cumulation" to allow accumulated rules of origin for each others' products. AUSTR Weisel said that the USG was engaged in a broader discussion about how to advance its FTA agenda in the Asia-Pacific region and that diagonal cumulation might serve as a possible model in the context of the proposed Free Trade Area of the Asia-Pacific (FTAAP). She noted that, according to U.S. rules, a diagonal cumulation provision could not be appended to our existing FTAs with Australia and Singapore, but would require negotiation of new agreements subject to TPA approval. The USG could not accommodate Singapore's request to establish a technical working group to assess the diagonal cumulation concept, but might be willing to convene an exploratory working group to discuss the future of regional FTAs, including the P-4 FTA between Singapore, New Zealand, Chile, and Brunei. DepSec Loh said that the GOS would support formation of an exploratory working group.

¶22. (SBU) With regard to Singapore's request that the USG reduce the period required for record-keeping of import and export-related documentation from five to three years, AUSTR Weisel explained that this was a statutory obligation under the Customs Act and would therefore be difficult to revise,

especially given the current security environment.

Pharmaceuticals

-- Standard Drug List (SDL) transparency (USG)

¶23. (SBU) AUSTR Weisel expressed dissatisfaction with the Ministry of Health's response to issues raised by U.S. industry during the Special 301 process concerning the lack of clear procedures for getting pharmaceutical products included in Singapore's SDL (ref B). She stressed that MOH's explanation fell short of general transparency provisions in the FTA. DepSec Loh agreed to provide additional information to help the USG better understand the SDL approval process.

Medical Products Working Group

¶24. (SBU) AUSTR Weisel noted that the U.S. Food and Drug Administration and the Health Services Authority (HSA) enjoyed excellent and growing cooperation in areas such as information exchange on product recalls and safety issues. She looked forward to broader engagement going forward, and to the visit to Singapore by FDA Administrator von Eschenbach in October 2007.

Financial Services

-- Credit Bureau Access (USG) -- ATM/credit card access (USG)

¶25. (SBU) Following up on a USG request raised at the 2006 FTA review to expand access to Singapore's credit bureaus, AUSTR Weisel said she was encouraged to learn that the first commercial credit company not regulated by the Monetary Authority of Singapore (MAS) would soon be granted membership in Credit Bureau (Singapore) Pte Ltd. DepSec Loh said he would ask MAS (which was not present) to provide an update about when this process would be completed and to discuss any plans to expand membership more broadly. He would also ask MAS to respond to claims made by U.S. industry that credit cards issued by local branches of foreign banks could not be used to obtain cash from ATM machines (whereas credit cards issued by foreign branches of the same banks could be used).

Legal Services

-- Liberalizing legal services (USG)

¶26. (SBU) AUSTR Weisel urged Singapore to further liberalize its legal services sector in line with similar efforts being undertaken for other service industries. DepSec Loh said that MinLaw would provide the USG with an update after it had

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completed its review of several proposals in the next few months.

Competition

-- Expansion of Competition Act (USG)

¶27. (SBU) AUSTR Weisel inquired whether Singapore was reviewing sectors exempted from the new Competition Act such as telecom, media, and financial services. DepSec Loh noted that separate competition codes governed these "carved-out" sectors and that the government was currently focused on implementing the final phase of the Competition Act concerning mergers and acquisitions, which will come into effect in July 2007. He claimed that initial phases of the Competition Act had been well received by U.S. companies.

¶28. (U) AUSTR Weisel and other members of the U.S. delegation

cleared this message.

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